



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RU AF \$ DAE

In re the application of:

Marks et. al.

Examiner: Lisa Hashem

Serial No. 09/838,330

Filed April 20, 2001

Art Unit: 2645

For: Method for Assembly of
Unique Music Playlists

RESPONSE TO DISMISSAL OF PETITION

U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This paper responds to the Dismissal of Petition dated March 22, 2005 in the above referenced application.

From that Dismissal (a copy of which is enclosed for reference) and the undersigned's telephone conversation this morning with the Petitions Examiner who issued the Dismissal, it seems that much of the documentation, including the Response, originally filed with the Petition was misplaced. In response thereto, and in accordance with the aforementioned telephone conversation, enclosed herewith is a copy of the entire documentation originally filed on January 27, 2005.

In particular, enclosed also is a photocopy of the self addressed Return Receipt Postcard, stamped by Patent and Trademark Office, evidencing receipt of that documentation. Also enclosed is a photocopy of the FedEx invoice showing delivery of the package on January 27, 2005.

~~Although our bank has confirmed that the original check for \$750.00 was deposited and has cleared, for caution's sake a replacement check in that amount is also enclosed.~~

Please associate the enclosed with the file in this application. If there are any questions, please contact me as soon as possible at 818-407-1503 (Pacific Time).

Thank you.


Brad I Golstein
May 4, 2005



UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

BRAD I. GOLSTEIN
METRO88
20755 PLUMMER STREET
CHATSWORTH, CA 91311

COPY MAILED

MAR 22 2005

OFFICE OF PETITIONS

In re Application of
Michael B. Marks, et al.
Application No. 09/838,330
Filed: April 20, 2001
Attorney Docket No. BOX-2

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 27, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b)¹ must be accompanied by: (1) the required reply,² unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item 1.

¹ As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

² In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The proposed reply required for consideration of a petition to revive this application must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

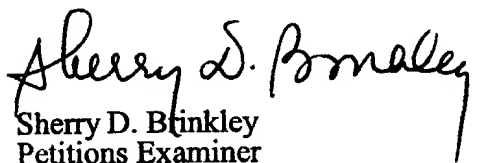
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
 Customer Service Window, Mail Stop PETITION
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

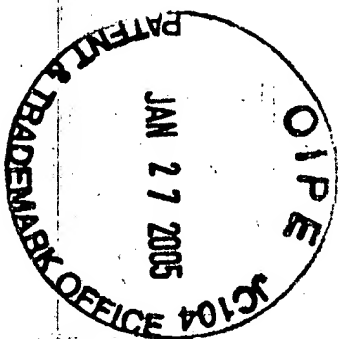
The centralized facsimile number is (703) 872-9306.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

BEST AVAILABLE COPY

Received this day Petition for Revival of an Application
for Patent Abandoned Unintentionally under 35 CFR 1.137(b),
Fee Payment, Response to Office Action, all in re 09/836,330



Box 2



Invoice Date: Feb 11, 2006
Account Number: 1392-9274-0
Page: 5 of 5

FedEx Express Shipment Detail By Payor Type (Original)

Dropped off: Jan 26, 2005

Payor: Shipper

Reference: NO REFERENCE INFORMATION

- Fuel Surcharge - FedEx has applied a fuel surcharge of 9.00% to this shipment.
- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$ 205.55
- Distance Based Pricing, Zone 8
- Package sent from: 91303 zip code
- 1st attempt Jan 27, 2005 at 06:40 AM.

Tracking ID 846782831038
Service Type FedEx Standard Overnight
Package Type FedEx Pak
Zone 8
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Jan 27, 2005 10:45
Svc Area A1
Signed by S.ZEWODIE
FedEx Use 006178790/0000014/

Sender
BRAD I GOLSTEIN
WORKTOOLS INC
20755 PLUMMER ST
CHATSWORTH CA 91311-5003 US

Recipient
US PATENT & TRADEAWK OFFICE
CUSTOMER WINDOW MAIL STOP PETI
2011 SOUTH CLARK PL CRYSTAL PL
ARLINGTON VA 22202 US

Transportation Charge	27.1
Fuel Surcharge	2.0
Earned Discount	-2.0
Total Charge	USD \$ 27.1

Shipment Detail Subtotal **USD \$ 52.3**

Dropped off: Jan 19, 2005

Payor: Recipient

Reference: Box-2 MotherLOAD

- Fuel Surcharge - FedEx has applied a fuel surcharge of 9.00% to this shipment.
- The Earned Discount for this ship date has been calculated based on a revenue threshold of \$ 205.55
- Distance Based Pricing, Zone 8

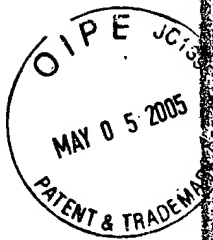
INET
Tracking ID 790892160410
Service Type FedEx Standard Overnight
Package Type FedEx Box
Zone 8
Packages 1
Weight 2.0 lbs, 0.9 kgs
Delivered Jan 20, 2005 15:00
Svc Area A2
Signed by J.MOL
FedEx Use 005472999/0001415/

Sender
Mike Marks
INVENTION CITY, INC
399 South Orleans Rd.
ORLEANS MA 02653 US

Recipient
Brad Golstein
WorkTools, Inc.
20755 Plummer Street
CHATSWORTH CA 91311 US

Transportation Charge	30.25
Fuel Surcharge	2.37
Automation Bonus Discount	-1.51
Earned Discount	-2.42
Total Charge	USD \$ 28.69

Shipment Detail Subtotal **USD \$ 28.69**



BRAD I GOLSTEIN
JOEL MARKS
20755 PLUMMER STREET
CHATS WORTH, CA 91311

111

DATE

10-7755/3220

PAY TO THE
ORDER OF

Commissioner for Patents & Trademarks

\$ 750.00

Seven Hundred Fifty Dollars

DOLLARS



CR COURTS & RECORDS

FEDERAL CREDIT UNION
718 WEST FIRST STREET
LOS ANGELES, CA 90012-2488

MEMO

Renue 09/836,330

And J. Golstein

⑆32207755⑆

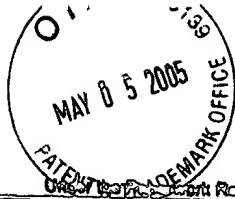
0005035649⑆

011

Received this day Petition for Renewal of an Application
for Patent Abandoned Unintentionally under 37 CFR 1.137(b)
Fee Payment, Response to Office Action, all in re 09/836,330

13.22

BEST AVAILABLE COPY



**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
Box 2

First named inventor: Marks

Application No.: 09/833,330

Art Unit: 2845

Filed: April 20, 2001

Examiner: Lisa Hashem

Title: Method for Assembly of Unique Music Playlists

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (703) 872-8308

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-8282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

- ☒ Small entity fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Response to Office Action (Identify type of reply):

- ☐ has been filed previously on _____
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

☐ has been paid previously on _____

☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 38 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1480, Alexandria, VA 22313-1480. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/83).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.


SignatureJan. 26, 2005
DateMichael Marks
Typed or printed name

Registration Number, if applicable

2 Lovell Lane
Address508-255-5227
Telephone NumberOrleans MA 02653
AddressEnclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9308._____
Date_____
Signature_____
Typed or printed name of person signing certificate

Under the Paperwork Reduction Project of 1999, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.


Signature

January 26, 2005

Date

Joel Merts

Typed or printed name

Registration Number, if applicable

McCreesh, 20765 Plummer Street

Address

618-407-1903

Telephone Number

Chattsworth, CA 91311

Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9303.

Date

Signature

Typed or printed name of person signing certificate